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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,514	12/09/2003	Paul H. Lundeen	48231-01011	3727

7590 12/02/2008
Holme Roberts & Owen, LLP
Suite 1300
90 South Cascade Avenue
Colorado Springs, CO 80903

EXAMINER

RUDAWITZ, JOSHUA I

ART UNIT	PAPER NUMBER
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3652

MAIL DATE	DELIVERY MODE
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12/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/731,514	Applicant(s) LUNDEEN, PAUL H.	
	Examiner JOSHUA I. RUDAWITZ	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-24 and 26-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-24 and 26-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claim 26 is objected to because of the following informalities: The claim currently depends from canceled claim 25, for the sake of prosecution the examiner will assume the claim depends from claim 24 instead. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15-16, 18, 20-25, 27, 29-32 and 44-45 rejected under 35 U.S.C. 102(b) as being anticipated by Barrett (US 2,703,184).

Barrett discloses a chute 60 extending from the rear end of said vehicle and extending substantially the width of said vehicle, see figure 8, said chute having a slide surface with a top edge positioned proximate the lower edge of said portion, at 53, said slide surface extending away from said lower edge downwardly toward a bottom edge of said chute spaced from said support surface to be at or below the rims of the wheel structures and below said top edge of said chute, see figures 1 and 2; a receiving member 59 having a front edge attached to said bottom edge of said chute, a rear edge spaced from said front edge a distance to define a loading area, between the end near element 59 and the point at which it curves, and side walls 57 configured to retain said material thereon and guide said material deposited on the loading area towards the chute when the

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apparatus is moved from a first position to a second position; a retaining wall, the back portion of 57, connected to and extending upward from said rear edge of said receiving member; wherein the retaining wall has a height selected to retain the material in the loading area but less than about the top of the rim of the tire; wherein the side walls extend about the loading area and have a height selected to retain the material in the loading area but less than about the top of the rim of the tire, the examiner notes that the limitation as currently written allows for the side walls to be taller than the rim of the tire as long as they are less than "about the top of the rim of the tire", here they are not much taller and therefore meet the limitation as written; a connector arrangement 53 for pivotally connecting said chute to a rear support member of said vehicle proximate said lower edge; and operation means 76 for moving said apparatus between said first position in which said apparatus extends away from said bottom with said receiving member disposed below said lower edge of said portion and above said support surface and said second position in which said loading area is raised sufficiently for the transfer of said material placed on said loading area onto said slide surface and toward said chute and toward said bottom; at least two side walls connected to and extending upwardly from said chute, wherein said side walls connected to said chute are configured to guide material from said loading area towards said storage area when said apparatus is in said second position; said loading area is a substantially planar platform disposed essentially horizontally above said support surface when the apparatus is in said first position; said receiving

member makes no contact with said support surface, when the device is in the second position; said receiving member and said chute are joined at an angle of greater than 90 degrees and less than 180 degrees; the planar platform is contoured.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 17, 19, 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett (US 2,703,184).

Barrett discloses the side walls and retaining walls however fails to disclose they are less than 6 inches high. It would have been obvious to a person having ordinary skill in the art, at the time of invention, to limit the size of the walls to less than 6 inches since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

3. Claims 33-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett (US 2,703,184) in view of Smith et al. (US 6,869,265).

With regards to claims 33-34, 36, 38-41 and 45:

Barrett discloses a chute 60 extending from the rear end of said vehicle and extending substantially the width of said vehicle, see figure 8, said chute having a

slide surface with a top edge positioned proximate the lower edge of said portion, at 53, said slide surface extending away from said lower edge downwardly toward a bottom edge of said chute spaced from said support surface to be at or below the rims of the wheel structures and below said top edge of said chute, see figures 1 and 2; a receiving member 59 having a front edge attached to said bottom edge of said chute, a rear edge spaced from said front edge a distance to define a loading area, between the end near element 59 and the point at which it curves, and side walls 57 configured to retain said material thereon and guide said material deposited on the loading area towards the chute when the apparatus is moved from a first position to a second position; a retaining wall, the back portion of 57, connected to and extending upward from said rear edge of said receiving member; wherein the retaining wall has a height selected to retain the material in the loading area but less than about the top of the rim of the tire; wherein the side walls extend about the loading area and have a height selected to retain the material in the loading area but less than about the top of the rim of the tire, the examiner notes that the limitation as currently written allows for the side walls to be taller than the rim of the tire as long as they are less than "about the top of the rim of the tire", here they are not much taller and therefore meet the limitation as written; a connector arrangement 53 for pivotally connecting said chute to a rear support member of said vehicle proximate said lower edge; and operation means 76 for moving said apparatus between said first position in which said apparatus extends away from said bottom with said receiving member

disposed below said lower edge of said portion and above said support surface and said second position in which said loading area is raised sufficiently for the transfer of said material placed on said loading area onto said slide surface and toward said chute and toward said bottom; at least two side walls connected to and extending upwardly from said chute, wherein said side walls connected to said chute are configured to guide material from said loading area towards said storage area when said apparatus is in said second position; said loading area is a substantially planar platform disposed essentially horizontally above said support surface when the apparatus is in said first position; said receiving member makes no contact with said support surface, when the device is in the second position; said receiving member and said chute are joined at an angle of greater than 90 degrees and less than 180 degrees; the planar platform is contoured.

Barrett fails to disclose the operation means includes a cable and winch mechanism, the cable extending from the winch and attached to a receiving member, the winch able to wind in and out the cable to move the receiving member between a deployed position and a transfer position.

Smith et al. (Smith) discloses an operation means includes a cable 24 and winch mechanism 14, the cable extending from the winch and attached to a receiving member, the winch able to wind in and out the cable to move the receiving member between a deployed position and a transfer position, see figure 1. Because both Barrett and Smith teach actuators that rotate an end

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loading mechanism for transport, it would have been obvious to a one having ordinary skill in the art, at the time of invention to substitute one rotational actuator for the other for the predictable result of rotating the loading structure to a transport position.

With regards to claims 35 and 37:

The Barrett in view of Smith combination discloses the side walls and retaining walls; however, fails to disclose they are less than 6 inches high. It would have been obvious to a person having ordinary skill in the art, at the time of invention, to limit the size of the walls to less than 6 inches since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

With regards to claims 42 and 43:

Barrett fails to disclose the operation means includes a cable and winch mechanism, the cable extending from the winch and attached to a receiving member, the winch able to wind in and out the cable to move the receiving member between a deployed position and a transfer position.

Smith et al. (Smith) discloses an operation means includes a cable 24 and winch mechanism 14, the cable extending from the winch and attached to a receiving member, the winch able to wind in and out the cable to move the receiving member between a deployed position and a transfer position, see figure 1. Because both Barrett and Smith teach actuators that rotate an end loading mechanism for transport, it would have been obvious to a one having

ordinary skill in the art, at the time of invention to substitute one rotational actuator for the other for the predictable result of rotating the loading structure to a transport position.

Response to Arguments

4. Applicant's arguments with respect to claims 15-24 and 26-45 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA I. RUDAWITZ whose telephone number is

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(571)272-7856. The examiner can normally be reached on Monday - Friday, 7:30 A.M. - 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. I. R./
Examiner, Art Unit 3652

/Saúl J. Rodríguez/
Supervisory Patent Examiner, Art
Unit 3652